IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2933 of 2004

with

CIVIL APPLICATION No 126/05

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT
and
HON'BLE MR. JUSTICE M.D. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GEB

Versus

PRAVIN NANJI NATHBAVA

Appearance:

1. First Appeal No. 2933 of 2004

MR DIPAK R DAVE for Appellant No.

CORAM : HON'BLE DR.JUSTICE J.N.BHATT

and

HON'BLE MR. JUSTICE M.D. SHAH

Date of decision: 17/01/2005

ORAL JUDGEMENT

(Per : HON'BLE DR.JUSTICE J.N.BHATT)

By this appeal by invocation of the provisions of Section 96 of the Code of Civil Procedure, the appellants (original defendants) have questioned the legality and validity of the judgment and decree recorded in Special Civil Suit No.89/97 by the Learned Civil Judge (S.D.) at Junagadh on 31st December, 2003, whereby the claim for compensation based on Law of Tort for resultant injuries and permanent partial disablement to the respondent (Original plaintiff) an amount of Rs.40,000/- came to be awarded and decreed with interest at the rate of 9% p.a. against the original claim of Rs.2 lakhs.

2. We have heard, the learned Advocate Mr.Dave for the appellants dispassionately. We have examined the evidence, apart the copies whereof came to be supplied to us in course of the hearing by learned Advocate Mr.Dave. We have also carefully scrutinised the impugned judgment and decree of the learned Trial Court Judge.

3. As the ill-luck could have been, on 30/6/1995 at about 9.00 a.m. the original plaintiff-the respondent herein became the victim of electrocution while he was climbing on a tree. He touched the electric wire passing near the tree and having an electric poll very close to the tree, as result of which, the original plaintiff Mr.Pravin N.Nathbava who was 14 years of age sustained serious injuries on various parts of the body but his left hand was severely damaged and injured due to which he was shifted to Civil Hospital, Junagadh, where he was undergoing treatment and during the course of the treatment it was noticed that there was necessity to amputate the left hand below the shoulder and ultimately the left hand of a young boy of 14 came to be amputated in the Civil Hospital, Junagadh. It is in this context, a suit came to be filed for the damages and recovery of Rs.2 lakhs with interest before the Civil Court, Junagadh for the injuries and resultant permanent partial disablement sustained by the original plaintiff for the

gross negligence on the part of the original defendant-Gujarat Electricity Board and its employees. The plaintiff relied on his evidence at Exh.32, whereas original defendant relied on the evidence of one officer Mr.Dave at Exh. 43. During the course of the recording the evidence, three documents came to be produced before the Trial Court namely:

(i) The report of the departmental inquiry produced at Exh. 44.

(ii) The Electric Accident Report with its Annexures at Exh.45 and

(iii) The map of the venue of offence produced at Exh. 46 produced before the Trial Court.

4. Upon Consideration of the oral evidence, as well as, documentary and the facts and circumstances, the Trial Court reached to the conclusion that, the original plaintiff has successfully established that he had sustained injuries and permanent partial disablement by way of amputation of left hand below shoulder due to the electrocution occurred on 30/6/1995 and it was an outcome of the negligence on the part of the original respondent authorities who are before us in this First Appeal. However, the Trial Court awarded only an amount of Rs. 40,000/- against the claim of Rs.2 lakhs by way of damages made by the original plaintiff in the suit. Original defendants who are the appellants before us have now challenged the amount of Rs.40,000/interalia, contending that there was no negligence on the part of the appellants (original defendants) i.e.Gujarat Electricity Board and its employees.

5. After having given our anxious thoughts and considerations to the entire factual profile emerging from the record of the present case, as well as, the evidence and the submissions raised before us, coupled with the clear picture emerging from the three documents which came to be produced along with the record of the evidence before the Trial Court and the text and tenor of the judgment of the Trial Court Judge, we are of the clear opinion that, not only that, appeal is meritless but we are prompted to say that the assessment of the damages made by the Trial Court is on a very very conservative side. In view of the young age of the injured original plaintiff being 14 and having sustained permanent partial disablement by way of imputation of left hand and permanent partial disablement in the leg and resultant incapacity for the employment in future.

However, since there is no any cross appeal, we leave the matter as it is. Appeal, therefore, shall stand dismissed. No order on Civil Application.

6. It is really, very unfortunate that the Gujarat Electricity Board, which is an instrumentality of the State, instead of responding to the legal duty for immediate payment of such a case despite the decree of the Court, has thought it expedient to question a very conservative amount of compensation, when the factum of accident is not in any dispute. The only dispute, which was raised, about the liability or the negligence on the part of the Gujarat Electricity Board. It is a settled proposition of law, that no negligence can be attributed to a minor. Again there was a live wire, there is no evidence that the live wire had in time insulators. Moreover, the three documents produced in the course of the evidence before the Trial Court, undoubtedly and manifestly revealed that, there was a gross negligence on the part of the Gujarat Electricity Board and despite that, the Board has thought it expedient to question the legality and validity of the meagre amount of Rs.40,000/awarded to the minor, unsophisticated, illiterate villager for the injury caused on the account of live wire. It is really, an unfortunate aspect when instrumentality of State, which is wedded to the welfare State has spent money and what not for avoiding the legal liability, instead of making immediate payment. The resistance is for non-making the payment awarded by the Trial Court. Be that as it may, we are unable to resist ourselves from making an observation that, in such petty case, not only appeal should not have been filed in the light of the facts but immediate payment ought to have been made. However, we deem it expedient, to direct the registry to send one copy of the judgment to the Chairman, Gujarat Electricity Board and the Chief Executive for the purpose of consideration and proper action for future strategies.

(DR. J. N. Bhatt, J.)

(M. D. Shah, J.)

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